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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,334

12/30/2003

Paul L. Hickman

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06/02/2008

WORKMAN NYDEGGER  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

RICHMAN, GLENN E

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

06/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/751,334	<b>Applicant(s)</b> HICKMAN, PAUL L.	
	<b>Examiner</b> /Glenn Richman/	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8,15-18 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) 15-17,25,27 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8,18,20-24,26 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/14/08,5/1/08,5/27/08</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 8, 18, 23, 24, 26, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisberg in view of Dyer et al (4,828,257).

Bisberg discloses an exercise apparatus having a level of effort that is adjustable with an actuator (abstract), said exercise apparatus providing a scripted virtual personal training experience for a user of said exercise apparatus (abstract), said scripted virtual personal training experience being stored in a memory (40) which is removably engageable with said exercise apparatus, said scripted virtual personal training experience provides warning of an impending change in said level of effort prior to a change in said level of effort, said change in said level of effort being caused by an automated control of said actuator by said exercise apparatus (col. 4, lines 36 – et seq.).

Bisberg does not disclose said scripted virtual personal training experience being modifiable based upon a performance of the user.

Dyer et al disclose a scripted virtual personal training experience being modifiable based upon a performance of the user.

It would have been obvious to use Dyer's modifiable script with Bisberg, as it is well known in the art, to modify a script based upon a performance of a user, as taught by Dyer, for providing a variable workout routine.

Bisberg further discloses said scripted virtual personal training experience Includes vocal and actuator control data stored in said memory (col. 4, lines 36 – et seq.), said automated control of said actuator is in accordance with said actuator control data (col. 4, lines 36 – et seq.), said exercise apparatus is selected from the group consisting essentially of a bicycle, a rowing machine, a step machine, a treadmill, and a resistance trainer, a frame fig. 1; a body-engaging member fig. 1, an actuator coupled between said frame and said body-engaging member 18, an audio display providing an audible alert of an impending change in a scripted exercise session col. 4, lines 36 – et seq.), an actuator controller coupled to said actuator for implementing said change subsequent to said audible alert col. 4, lines 36 – et seq.), said audio display includes a loudspeaker 44

Claims 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisberg and Dyer et al in view of Bond et al.

Bisberg discloses said exercise apparatus is one of a plurality of exercise apparatus fig. 1.

Bisberg does not disclose the exercise apparatus is in at least part-time communication with a computer that is separate from said exercise apparatus.

Bond et al discloses an exercise apparatus is in at least part-time communication with a computer that is separate from said exercise apparatus. "After every

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sixteen executions of the 100 Hz routine, the 6.25 Hz routine will execute. The 6.25 Hz routine performs torque and velocity baseline measurements, executes front panel routines and calculates the PRIOR.VEL.ERR value. The values of the parameters which are read and/or calculated in the 6.25 Hz routine are held and passed to the 100 Hz routine for use in sections of that routine. The data transmission routines performs basic serial data communications between the on-board, real-time control computer system and the remote computer system which performs data processing and display functions and/or downloads control information to the on-board computer system."

It would have been obvious to use Bond et al's computer with Bisberg's devices, as it is well known to use a computer separate from an exercise device, as taught by Bond et al, for communicating exercise data to the computer.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisberg and Dyer et al in view of Sweeney 4358105.

Bisberg does not disclose a visual display displaying images related to said scripted exercise session.

Sweeney disclose a visual display displaying images related to said scripted exercise session col. 4, lines 60 – et seq.

It would have been obvious to use Sweeney's display with Bisberg exercise device, as it is well known as taught by Sweeney, to use a visual display, for providing visual feedback to an exerciser.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/  
Primary Examiner  
Art Unit 3764